15. 19

OBSERVATIONS

UPON THE

VAGRANT LAWS;

Proving that the

STATUTES

IN

QUEEN *ELIZABETH*'S TIME

Are the moſt proper

FOUNDATION

FOR A

LAW of that NATURE:

AND

That all Alterations that have been made ſince, have been for the worſe.

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OBSERVATIONS

UPON THE

VAGRANT LAWS, &c.

WHEN a Man conſiders how long a Time the Amendments of the Vagrant Law have been depending, one might reaſonably have expected ſome Improvement, ſome little Advance towards Perfection; in moſt Caſes a Man improves upon himſelf, one Man upon another, and one Age upon another, but this has turned out quite otherwiſe, every Remove has been from bad to worſe, and the laſt of all ſeems to be the worſt of all.

To be officiouſly and neceſſarily obliged to take up all Vagrants whatſoever, without Diſtinction, to be forced to keep Foreigners, when taken up, at your own Expence, becauſe you can't tell what elſe to do with them, to be forced to ſend Natives to their Settlement which they left, becauſe it could not maintain them, and to remove them

from Pariſhes that want their Aſſiſtance, and where they may be employed uſefully to themſelves, and the Publick, are things ſeverely hard, and intolerably unjuſt. Why ſhould a Foreigner be at Liberty to ſettle where he pleaſes? Why ſhould a poor Native, whoſe whole Eſtate is his Labour, be deprived of an Opportunity of making the moſt of that? Why ſhould a Pariſh be obliged to keep an Inhabitant as a dead Weight, when he may ſerve and be a uſeful Member of the Common-wealth, by going from Pariſh to Pariſh, to aſſiſt in inning their Hay, Corn, and Hop Harveſt? And why ſhould thoſe other Pariſhes be deprived of ſuch neceſſary and uſeful Aſſiſtance, and be forced to have their Work done for want of them, at double the Charge it need to be? And why ſhould Countries be put to ſuch great Charges of removing, in Caſes where it manifeſtly does more harm than good.

To make out more clearly what I ſay, I will begin with the firſt Act upon that Subject, the 39 *Eliz.* C. 4. and C. 17. Theſe Acts divide the Poor into two Sorts, the Induſtrious and Unfortunate, and the Idle or Criminal; and again, they ſubdivide the Criminal, and direct and provide for their Puniſhment according to the Decree of Guilt, and Nature of their Offence, either by Whipping, Impriſonment, Tranſportation, or Hanging, by an ample Adequate, and in ſome Caſes, diſcretionary Power, lodged in Juſtices of Peace, either in or out of Seſſions; and I never yet heard of any Perſon hanged, and ſcarce ever ſuffering wrongfully, by this Power being too exceſſive, or the Magiſtrates great Abuſe of it. Indeed theſe Acts are defective in ſome reſpects; tho' they point out the Malady ſufficiently, yet they do not apply a a proper Remedy; for to impriſon an idle Fellow till any Farmer will enter into a Recognizance to hire him for a Year, or an unfortunate ſick or infirm Perſon, till ſome Hoſpital will take care of him, will be in effect a perpetual Impriſonment, but this was a good deal owing to the

Condition

Condition and Circumſtances of the then Times; there was at that Time no Law in Being for Pariſhes to provide for their own Inhabitants, nor till four Years afterwards, when they becoming troubleſome too, a Law was made in the 43d of her Reign, providing for the Care of them, which ſeems to be a compleat and ſufficient Remedy, with regard to the Induſtrious and Unfortunate; but as for the idle lazy Rogues, no ſufficient Remedy has been found out yet, tho' we have been in ſearch of it theſe Hundred and fifty Years, we ſeem ſtill to be as far off as ever.

THE next Act I ſhall take Notice of, is the 13 & 14 *Car.* II. Ch. 12. which, tho' calculated only for the ſettled Poor, yet by turning the Queſtion, from how to provide for them, into who ſhall provide for them, has raiſed ſuch a Spirit of Shifting, inſtead of honeſt Induſtry in the Kingdom, that it has coſt many a Pariſh as much Money to remove one poor Perſon, as it would have done to have maintained ten; and if the preſent Law about Vagrants, which puts them on the ſame Foot, as far as the Nature of the Caſe will admit of, continues, I may ſafely ſay, without any great Spirit of Prophecy, 'twill one with another coſt at leaſt twenty times as much.

BESIDES, this further grand Objection, that tho' an Appeal is by this new Act given to the Quarter-Seſſions, yet that Court are not empowered to determine any thing, nor is it appointed who ſhould be Reſpondent or Defendant; ſo that an Appeal muſt neceſſarily come to nothing, both for want of Juriſdiction and of Parties, and the Court will ſtand the Chance of an Information both ways, either for refuſing to act, or acting without Powers.

THE next Vagrant Act which I ſhall take Notice of, as being next in turn, is the 11 and 12 of *Will.* III, which I think, I may venture to call the firſt deviating Act; this

Act puts Vagrants upon a quite different Foot from what they were before, and inſtead of leaving Vagrants to ſhift for themſelves, and get home by a limited Time, directs the Charges of paſſing them to be borne by the County, not by the Inhabitants, which ſeems to be but of little Conſequence; for if I am to pay a Rate, what matters it, whether I pay to the High or Petty Conſtable; that ſeems to be a Diſtinction ſcarce worthy of the Legiſlature. *And if I may be allowed to ſpeak my Mind freely, I ſhould call* this Act, *the greateſt Act of Vagrancy that ever was committed, by reaſon of its rambling ſo far from the intended Purpoſe, and miſleading ſucceeding Parliaments ever ſince.*

THE next Vagrant Act is that of the 12th of Queen *Anne*, which without Diſtinction between Merit or Demerit, or Guilt from Innocence, directs all to be whipt, and therefore for Diſtinction ſake, I will call it the *Whipping Act*, this Act at coming out ſeemed to promiſe much, but in Proof I think it anſwered little; only occaſioned

THE next and laſt Act relating to Vagrants, which runs directly into the other extreme, and inſtead of Whipping all, directs none to be Whipt; good or bad, they are all to be uſed alike merciful, for which reaſon, I think I may juſtly call it the *All-Merciful Act*, by the Lenity and Indulgence of which, I don't doubt in a little time, to ſee a Gang of Sturdy Beggars inſolently taking the Tour of *England*, and demanding the Reward of the Diſcovery-Money (for apprehending thoſe who no Body can avoid ſeeing) and making uſe of it as a new Fund, to ſet out again upon a new Circuit, which as the Law now ſtands, will be their due, and cannot be denied them, at the Peril of an Information againſt the Juſtice refuſing, a large Scope of Field-room for Beggars to inſult, and Lawyers to roaſt and teaze Magiſtrates, unleſs things ſhould take another turn, which may be worſe, if the whole Nation ſhould be made a Prey

to trading Juſtices and Beggars in Conjunction. *And by the Way, is it not a monſtrous Abſurdity, to take ſo much Care to remove them, and ſo little to confine them when removed, why may they not as well be ſet down to ramble from the firſt Place as from the laſt.*

HAVING thus in a ſummary View ſet forth the Subſtance of the ſeveral Acts relating to Vagrants, and, as I think, very plainly ſhown the many great Inconveniencies from the latter Laws upon that Subject, I mean thoſe whereby the Criminal Poor are in all reſpects put upon the ſame Foot with the Unfortunate. I ſhall beg leave in a Caſe of ſo much Importance, freely to ſpeak my Mind about the Alterations I think neceſſary, and to recommend the 39th of *Elizabeth* as the Baſis of ſome new Law to be made upon that Subject, with little or no more Variation than what ſeems abſolutely neceſſary, having a Regard to this Principal, that if poſſible the Juſtices of a Nation ought to be as current as the Coin.

IN the firſt Place, taking it for granted, that the healing the Sick, relieving the Needy, and correcting the Inſolent, requires Diſpatch, and will not admit of Delay.

I WOULD recommend the ample and extenſive Authority given to Juſtices of the Peace, under the 39th of *Eliz.* to be continued, and rather enlarged than leſſened. People may talk of Baſhaws and Tyrants, but that will appear to be a groundleſs Apprehenſion, when it comes to be conſidered that a Magiſtrate is ſo eaſily diſarmed, or put out by the Breath only of the Lord Chancellor, without *Scire facias*, or Information; therefore there can be no Reaſon to muzzle and confine him ſo very ſtrictly when he is in Office, tho' by the way, their preſent Power under the late Act is much greater; for as the Law now ſtands, the Juſtice muſt paſs the Vagrant, and may, where he pleaſes, without check or controul; and, if inſtead of going the direct Way, he ſhould be ſent the

round

round about Way, from Houſe of Correction to Houſe of Correction, every Body knows the meaning of it, *The fartheſt Way about is the nigheſt Way home* to a jovial Beggar, who is never out of his Way, more eſpecially when he is ſet on Horſeback and travels ſumptuouſly at the County Charge; ſumptuouſly I call it, in compariſon to the March of an Army, who tho' they are employed in the Defence of the Publick, and are immediate Servants to the Commonwealth, yet a Gentleman Soldier is forced to walk on foot.

In the ſecond Place, I would have him directed upon Examination of a Vagrant, carefully to diſtinguiſh between unfortunate and criminal; and with regard to the Unfortunate, to be inſtructed and empowered to uſe them all with the utmoſt Tenderneſs; if they ſet out from home with the Spirit of Induſtry, and an honeſt Deſign to aſſiſt other Countries, and happen accidentally to be ſick for a Week or a Fortnight, to be relieved at the Charge of the Pariſh where they fall, and ſent about their Buſineſs as ſoon as recovered; but if they are like to continue diſabled, I would have ſuch, and ſuch only, thought worthy at the County Charge, to be conveyed to the Pariſh where they belong, according to the Laws relating to the ſettled Poor; or rather, why may not this be more effectually done, by an Order of weekly or other Allowance, to be made by two Juſtices of the County, and paid by the Officers of the Pariſh where the Caſualty happens, to be repaid by the Pariſh to which the Vagrant properly belongs, and enforced by tranſmitting that Order to two Juſtices of the County where that Pariſh lies, to be levied by their Warrant, by diſtreſs and ſale of Goods of the Officers of that Pariſh in caſe of refuſal, until they think fit to bring their Pariſhioner home at their own Charge.

The Conſequence of this will be, the Saddle will always be layed upon the right Horſe; Pariſhes properly chargeable will only be charged, and Counties will be quite cleared

cleared of what no Ways belongs to them, and it may alſo be the means of making Pariſhes more careful how they let their Poor ſtrole about, at leaſt by laying out their own Money, it will give all Pariſhes an Opportunity of being good Huſbands; as for the idle, diſorderly, and dangerous Rogues, they have forfeited their Right to their Liberty by abuſing it, and conſequently the Publick are entitled to do with them as they pleaſe; and I would leave them to the Magiſtrates Diſcretion, under the 39th of *Elizabeth*, and in this Caſe, ſuppoſing the worſt, ſuppoſing the Law a little too ſevere, ſuppoſing it in ſome Degree an Evil, will not the Rule about two Evils to chooſe the leaſt, hold in this Caſe; is it not much better to leave Vagrants to the Magiſtrates Mercy, than all Mankind to their Mercy: But why ſhould I admit this to be an Evil, or unjuſt, when 'tis agreeable to the poſitive Law of the Land in all other Caſes, which always direct an Offender to be tried and puniſhed in the Place where the Offence is committed. If a Man is capitally guilty, he is to be hanged where he offends; if he is guilty of Petty Larceny, he is to be whipt where the Offence is committed; and why not the like Law in Caſe of Vagrancy, why is the County to be put to the immenſe Charge of removing him 2 or 300 Miles only to be puniſhed, or rather not puniſhed, at a Place who know nothing of the Matter, contrary to the ſtanding and fundamental Law of the Land in all other Caſes? *A Felon is a Felon, a Rogue a Rogue, an idle Fellow an idle Fellow, whether he be a Native or Vagrant makes no Difference,* Cœlum non Animum mutant, &c. *there is no ſolid, ſubſtantial Reaſon for their different Treatment on that Account, or for whipping one upon the Spot and ſending the other away without any whipping. I have heard, indeed, ſome Gentlemen of another Opinion, and diſtinguiſh this Caſe very nicely, and laid down, that there is not ſo much Danger from Natives, but that Vagrants are ſuch dangerous Rogues, that they ought to be treated tenderly for Reaſons of Policy more than Juſtice, as ſome* Indians *wor-*

ſhip

ſhip the Devil for fear of Hurt or Miſchief; but I take this to be a ſavage, weak Argument and not well grounded, becauſe it contradicts a Maxim of our Law, which ſays, Ubi eadem ratio ibi idem jus.

UNDER this Head permit me to compare the Vagrant Act with the Mutiny and Deſertion Act, which is much more, and yet not thought too ſevere, and I verily believe if an Appeal or *Certiorari* lay to a Court Martial, the whole Army might deſert before one Soldier could be puniſhed; and why ſturdy Beggars and idle Rogues ſhould be intitled to more Favour than Gentlemen Soldiers I cannot ſee.

UPON the whole, till the preſent Vagrant Act is alter'd by ſomething of this Nature, foreign Beggars may ſettle and levy Contributions where they pleaſe, Natives may ramble and return, at the County Charge when they pleaſe, and get good living and ready Money by ſo doing, Counties muſt paſſively ſubmit to and bear the Burthen which they can no ways help, and Pariſhes where they happen to fall, muſt maintain them, without any Proſpect of Relief, unleſs they condeſcend to bribe ſo low, as to give Money even to Beggars to get rid of them at the Hazard of having them ſettled upon themſelves by ſo doing, and what can be the End of all this but Ruin and Deſtruction inevitable and univerſal.

AFTER all, in reality, there is no well knowing what to do with the Poor, without knowing what to do for them, they may be removed from Pariſh to Pariſh, and toſſed from Pillar to Poſt, like the rolling of *Siſyphus*'s Stone, and to as much Purpoſe. One may endeavour to teach them to live without Bread as the Man did his Horſe without Corn; but the only effectual way to provide for them, is to prevent the Exportation of unwrought Wool and manufacturing it at home, this will enable every Man to live upon his own Eſtate, which

is the Work of his own Hands, and Sweat of his own Brow, this, by making us rich, will more effectually reduce the Power of our Enemies, than all the famous Exploits of our conſummate Generals and Admirals. And ſurely one might hope and expect from Patriots of all ſorts, the Publick might deſerve ſo much of their Attention, as to attempt and purſue an Undertaking of this kind, and not give it up as deſperate, with only once trying, or perhaps not at all. Do not the *Dutch* ſecure their Spices, the *Portugueſe* their Diamonds, and the *Spaniards* their Gold to themſelves? (Trades and Riches of their own acquiring, as well as preſerving to themſelves by their own Induſtry) and can any Body doubt, if Heaven had bleſſed them with the Growth of Wool, but that they would have preſerved that too, and why this may not be done by a *Britiſh* Parliament I cannot conceive; how comes it to paſs that *England* alone, ſhould, in this reſpect, be the only helpleſs Nation in the whole World, it ſeems to me to have the Appearance of Corruption ſome where, and to be more owing to the want of Will than Skill.

But if this great, deſirable, and important End cannot be obtained, which I would not eaſily give over, we muſt then have recourſe to, and be content with, the next beſt Step that can be taken, if the Mountain won't come to *Mahomet*, we muſt ſend *Mahomet* to the Mountain, if we can't find Work for theſe poor Wretches here, we muſt, out of Neceſſity, as well as Charity, ſend them to the Plantations, as we did the *Palatines*, who now live very comfortably. Their Caſe would then be nothing more than what is common to younger Brothers of many conſiderable Families, who ſeek out to make their Fortunes abroad: Charity begins at home, there can be no Reaſon why we ſhould load our Eſtates and ſtarve ourſelves, to ſupport them which would, in Effect, be changing Ownerſhip when the Bees ſwarm, either new Hives muſt be got or ſome will turn Robbers, when a Man

is deſperately poor and helpleſs, it won't be long before he becomes deſperately wicked, according to the common Saying, that 'tis better to be hanged than ſtarved, and therefore no Man ought to be truſted, or tempted with being put into ſuch a Condition if it can poſſibly be avoided; Nature will be apt to rebel againſt Principle in a Caſe of ſuch Extremity.

BUT ſtill as the Number of induſtrious Inhabitants are the Riches of a Nation, 'tis to be hoped the Wiſdom of our Legiſlature will try again and again, to find Work for them here at home, and ſome more effectual way to make them work; and here I am again put in Mind of the *Dutch*, I think a little of their Diſcipline might be of great uſe, for I take Lazineſs and Diſcontent to be as much the general Temper, as Poverty is the Condition of the Working part of the Nation.

TO conclude, as the Vagrants are only one Species of the Poor who are the Genius, I ſhould think that one Act comprehenſive of all the Poor, properly diverſified, might be made ſuitable to the whole and every Part, and in order to it I would beg Leave to recommend a Pamphlet (Entitled, *A New Scheme for reducing the Laws relating to the Poor into one Act of Parliament, and for the better providing the Impotent Poor with Neceſſaries, the Induſtrious with Work, and for the Correction of idle Poor)* as a Foundation to proceed upon, what ſignifies a ſuperfluous Redundancy of inſignificant Words, or a confus'd Collection of inconſiſtent Meanings, under different Heads and indigeſted; one may as well ſay nothing, as what amounts to nothing, or what is ſtill worſe Contradiction, *Multum in Parvo*, in the Strain and Language of old Acts of Parliament, with a liberal Interpretation attending them, makes a much better Figure; that *Parvum in multo* with the Modern way of Interpretation, in narrowing every thing ſo ſtrictly to the Letter as not to reach the Meaning.

THE Statute Laws are now become ſo voluminous and intricate, and by making and mending new Quibbles and Blunders which daily ariſe like Hydra's Heads, are in ſuch a way of increaſing, that in a little time, unleſs ſome Method like this be taken, I fear they will become the Grievance of the Subject, and the Shame of the Nation.

I am

Yours, &c.